

ResCom representatives requested a copy of GTE-SW's internal guidelines concerning placement of demarcation points, GTE-SW representatives initially replied that GTE-SW's guidelines were proprietary and could not be provided to them. Att. A at 10, Nos. 54 and 55. Third, even if one considers GTEP 610-148-010 the standard practice of GTE-SW, Complainants allege that GTE-SW has failed to comply with its own internal guidelines. Section 3.3.2 of GTEP 610-148-010 states that "[t]he point of demarcation can be established at the property line in cases where the owner desires it." Att. A at 15, No. 91. Complainants contend that GTE-SW's own interpretation of its guidelines requires that it relocate the demarcation point at the MPOE at the owner's request. GTE-SW's written interpretation of its previous demarcation guidelines contains the following question and answer:

Question 10. Once the point of demarcation is established, can the customer request a rearrangement or an alternate location for the point of demarcation?

Answer: Yes, however, once the point of demarcation is established any alteration or modification to the point of demarcation will be at the customer's expense.

Att. A at 16, No. 92.

Complainants asked GTE-SW if the response to Question 10 would be any different under GTEP 610-148-010 than under the previous demarcation guidelines. GTE-SW responded that the response to question 10 under the previous guidelines would be consistent with GTEP 610-148-010. Att. A at 16, No. 93. For these reasons, Complainants argue that GTE-SW's current demarcation guidelines and its own interpretation require that it relocate to a mutually agreeable point of demarcation.

D. General Counsel's Position

General Counsel advocates that 47 C.F.R. § 68.3 does not preclude relocation of the demarcation point at the request of the premises owner. Therefore, according to General Counsel, the local carriers should terminate the network in a manner that accommodates the customer's rights to access the network. To accommodate the property owners in this case, General Counsel believes that GTE-SW should allow them to elect the service configuration which will promote the customer's ability to perform inside wiring operations.

E. ALJ's Recommendation

1. Inconsistency of GTE-SW in Applying its Internal Guidelines

The FCC requires that the local carrier's demarcation practice be reasonable and nondiscriminatory. 47 C.F.R. § 68.3(b)(2). Although GTE-SW currently has internal guidelines that control the placement of the demarcation points, the ALJ finds that GTE-SW's practice, which includes the unwritten management policies, is unreasonable and discriminatory. The evidence shows that GTE-SW agreed to locate the demarcation point at a single point at the Palms. Joint Ex. 1 at 6, No. 34. GTE-SW later refused to relocate the demarcation point at any other properties of the Complainants. With respect to Deer Run Apartments, one of the complexes in dispute in this case, GTE-SW initially indicated to Complainants' representatives that GTE-SW would negotiate to establish a mutually agreeable demarcation point. Att. A at 7, No. 39. Complainants also began negotiations to relocate the multiple demarcation points at the Bridgeport and even installed a PBX on the property. Subsequently, negotiations stopped and Complainants were informed that GTE-SW had a new manager who handled these issues. Att. A at 8-9, Nos. 47-50. It was only after the new manager, Mr. Ron Knight, became involved that the practice changed, and GTE-SW refused to relocate demarcation points. These facts, which GTE-SW does not dispute, do not establish a reasonable and nondiscriminatory operating practice for locating demarcation points. In fact, the opposite is true. GTE-SW's practice is not reasonable and nondiscriminatory, but rather inconsistent

and subject to change depending upon the management or the property involved. Moreover, it is not reasonable for GTE-SW to have an internal policy that can be changed at any time because of management decisions. If this were the accepted practice, GTE-SW could change its policy daily without notice to the customers.

GTE-SW's internal demarcation guidelines also state that they are only for use by GTE-SW employees and approved contractors. When ResCom representatives asked for a copy of the guidelines, they were told that they are proprietary and could not be provided. Att. A at 10, Nos. 54 and 55. If GTE-SW does not reveal its internal guidelines to customers, then it becomes extremely difficult to determine if GTE-SW is operating reasonably. Although GTE-SW eventually provided its internal guidelines to the Complainants as this proceeding progressed, it is unclear from the record if GTE-SW will provide its demarcation guidelines to other customers or competitors upon request. This further highlights the need for a tariffed demarcation policy that is approved by the Commission.

2. Interpretation of GTE-SW's Internal Demarcation Guidelines

After a review of the evidence and the parties' arguments, the ALJ concludes that GTE-SW's current internal guidelines, which include the unwritten policies developed *ad hoc* by the new management, are inconsistent, unreasonable, discriminatory, and anti-competitive. However, because GTE-SW does not have a tariffed demarcation policy, the ALJ can only look to the written internal guidelines to determine if GTE-SW should relocate the demarcation points for the properties involved in this complaint. Once GTE-SW files its tariff and it is approved, the tariff will supersede any internal guidelines GTE-SW might have. In reviewing the internal guidelines, the only provision that deals with the issue in this complaint is section 3.3.2. That section states that "[t]he point of demarcation can be established at the property line in cases where the owner desires it." In a field guideline established prior to the current internal guidelines, GTE-SW determined that a customer could seek relocation of the demarcation point at the customer's expense. GTE-SW, in the stipulation of facts, agreed that its current internal guidelines were not in conflict with this statement. Att. A at 16, Nos. 92 and 93. Based on this evidence, the ALJ concludes that GTE-SW's written

internal guidelines allow a customer to request the relocation of the demarcation point at the customer's expense. The unwritten practice not to relocate, developed by new management, is arbitrary and unreasonable and is not included in GTE-SW's internal guidelines. GTE-SW implemented this unwritten practice without notice to its customers, and it offered no plausible explanation for the change. Moreover, because GTE-SW has failed to apply a reasonable and nondiscriminatory demarcation practice, the multi-unit property owner has the right to determine the location of the demarcation point. *See* 47 C.F.R. § 68.3(b)(2).

3. Resolution of this Complaint in Compliance with FCC Rules

Accordingly, the ALJ recommends that GTE-SW collapse the multiple demarcation points on all properties in this proceeding to a singular demarcation point at the MPOE. GTE-SW shall charge the Complainants for facilities rearrangement necessary to establish the singular demarcation point. Although the ALJ recommends that GTE-SW relocate the demarcation points in this complaint, GTE-SW will continue to keep the investment associated with the cable facilities on the non-network side of the demarcation point on its books for regulatory accounting purposes. GTE-SW will also continue to earn a return on and depreciate the unrecovered portion of the investment associated with the cable facilities on the non-network side of the demarcation point. At one point in this proceeding, the Complainants indicated that they were agreeable to purchasing the cable facilities. Complainants, however, did not discuss purchasing the facilities in their post-hearing brief. The ALJ's recommendation does not include purchasing the cable facilities; however, based on the recommendation in this case, the parties are free to negotiate the purchase of the cable facilities. If Complainants do not purchase the cable facilities, they will have the "allowed use" of the facilities as defined in Docket No. 10831. *See* Att. C, Docket No. 10831, 20 P.U.C. BULL. at 1026, Findings of Fact 21-24.

When GTE-SW files its revised tariff, the ALJ recommends that GTE-SW address recovery of its investment, the purchase of its cable facilities, and allowed use. Until GTE-SW's amended STS

tariff, with the demarcation practice included, has been approved by the Commission, the ALJ recommends that any further complaints requesting relocation of the demarcation point be abated.

XI. CONCLUSION

For the reasons set forth in the PFD, the ALJ recommends that GTE-SW relocate the multiple demarcation points to a single demarcation point at the MPOE for the properties involved in this complaint; and that GTE-SW file a tariff detailing its demarcation practice within four months of the date of the Order in this docket. Finally, the ALJ finds that GTE-SW's current demarcation practice is unreasonable, discriminatory, and anti-competitive in violation of its tariff and PURA 95, and inconsistent with FCC Rules.

XII. FINDINGS OF FACT

1. On May 30, 1995, NRSC, ResCom, and MTS filed a complaint against GTE-SW, alleging that GTE-SW had violated its tariff and internal guidelines by refusing to relocate multiple points of demarcation in certain of Complainants' multi-unit properties to a single point of demarcation at the MPOE.
2. NRSC withdrew from the proceedings on July 18, 1995.
3. The demarcation point is a physical location separating the customer-owned telephone wiring from the telephone company-owned wiring.
4. The MPOE may be either (1) where the wiring crosses the property line or (2) where the wiring enters a building or buildings.
5. ResCom and MTS are STS providers that offer services to tenants in residential high-rise buildings and apartment complexes. ResCom and MTS typically provide access to local exchange

voice and data, long distance voice and data, as well as video and climate control services to tenants in the properties which they serve.

6. ResCom and MTS are the agents of the owners of the properties in which they provide residential multi-tenant services.

7. ResCom and MTS obtain service from GTE-SW's STS tariff to interface with the local network to provide the telecommunications services in the properties in GTE-SW's service territory. The Complainants also compete with GTE-SW for local exchange customers in multi-tenant complexes.

8. On January 26, 1995, NRSC filed an informal complaint pursuant to P.U.C. PROC. R. 22.242(d) regarding the demarcation point issue. On February 21, 1995, ResCom filed its informal complaint. Neither of these complaints were resolved informally. MTS did not file an informal complaint but filed its complaint directly with the Commission pursuant to P.U.C. PROC. R. 22.242 (d)(1)(C) because the complaint alleges anti-competitive practices by GTE-SW. No party objected to MTS foregoing the informal complaint process.

9. On April 25, 1995, the Complainants filed their complaint with the Commission and requested that the case be docketed. The PUC's Director of Hearings assigned the docketed case to Judge Michael J. O'Malley, who presided over the proceedings.

10. On May 17, 1995, the first prehearing conference was held in this proceeding. At that prehearing conference, the ALJ established a procedural schedule leading to a hearing on the merits to begin on October 10, 1995, and ordered the Complainants to file a formal complaint setting forth all allegations.

11. On May 30, 1995, the Complainants filed their formal complaint alleging, among other things, that GTE-SW had violated its tariff and internal guidelines by refusing to relocate certain demarcation points.

12. On June 26, 1995, GTE-SW filed a motion to dismiss based on lack of jurisdiction, federal preemption, failure to state a claim, confiscatory regulation, waiver and equitable estoppel, and standing. On July 10, 1995, the Complainants and General Counsel filed briefs, opposing the motion to dismiss on all grounds. On July 19, 1995, GTE-SW filed a reply to the responses of General Counsel and the Complainants. On July 19, 1995, all parties filed briefs on notice and burden of proof.

13. On July 24, 1995, the ALJ abated the procedural schedule, pending the ALJ's ruling on the legal issues. On August 9, 1995, the ALJ issued Order No. 9, which denied GTE-SW's motion to dismiss on all grounds and concluded that GTE-SW had the burden of proof in this case.

14. GTE-SW chose not to appeal the ALJ's ruling on the preliminary legal issue; therefore, on August 22, 1995, the ALJ issued Order No. 10 requesting that the parties agree on a procedural schedule by September 1, 1995.

15. The parties were unable to reach an agreement on the procedural schedule; therefore, the ALJ scheduled a prehearing conference for September 19, 1995, to set a procedural schedule. At the September 19, 1995 prehearing conference, the ALJ developed a procedural schedule with the hearing on the merits beginning on December 7, 1995.

16. On September 1, 1995, this docket was transferred to the SOAH.

17. On October 31, 1995, the ALJ granted the motion to intervene of ActiveTel. Although ActiveTel intervened, it never actively participated in the proceedings.

18. The parties requested that the hearing on the merits scheduled for December 7, 1995, be continued until December 19, 1995, and the ALJ granted the request.

19. On December 19, 1995, the ALJ convened the hearing on the merits but recessed that same day to allow the parties to finalize a stipulation of facts. On December 20, 1995, the parties filed a stipulation of facts to streamline the contested case. On that same day, the ALJ reconvened the hearing on the merits to clarify certain issues with the parties.

20. On December 28, 1995, the ALJ admitted into evidence the stipulation of facts and exhibits A through M. The ALJ and the parties also asked clarifying questions regarding the stipulation of facts and exhibits A through M. Staff witness John Costello was the only witness to testify. During the hearing on the merits, the parties agreed to mediate the remaining disputed issues. The ALJ concluded the hearing on the merits on December 28, 1995, and requested that the parties notify him of the available dates for mediation.

21. On January 9 and 10, 1996, SOAH Judge Beth Bierman conducted the mediation in this case. After the mediation, the parties continued settlement negotiations for a month.

22. On February 9, 1996, the ALJ issued Order No. 20 requesting a status report on the settlement negotiations. On February 14, 1996, the complainants informed the ALJ that they were unable to settle the remaining disputed issues. Based on this information, the ALJ set a briefing schedule with the final briefs due on March 18, 1996.

23. GTE-SW provided direct mail notice to all GTE-SW customers who had expressed concern about their network demarcation point for multi-unit properties. GTE-SW also provided direct notice to trade organizations and groups that represent the interests of building owners and managers. On September 21, 1995, GTE-SW filed an affidavit of notice, verifying that notice had been provided as ordered. All prehearing conferences and the hearing on the merits were noticed in the *Texas Register*.

24. The recommendations in this case are not so broad as to interfere or conflict with the FCC's jurisdiction, rendering it unnecessary to abate this proceeding.

25. GTE-SW has not filed tariff amendments with the PUC to redefine the location of the demarcation point on a customer's premises subsequent to the FCC's Order in CC Docket No. 88-57. The Company has, however, modified its internal demarcation guidelines, GTEP 610-148-010, which contain specific terms and conditions for placing demarcation points.

26. GTE Telephone Operations has internal demarcation guidelines which apply to all GTE operating companies nationwide--including GTE-SW. Section 2.1 of the guidelines (GTEP 610-148-010) states that "all elements of this practice must be adopted and implemented by all operating regions and divisions, for all classes of network services, except for those locations where other simple wiring applications have been mandated through individual state regulatory commission/agency rulings."

27. GTE California, GTE Northwest, and GTE-SW are subject to GTE Telephone Operations policies in GTEP 610-148-010, and in both California and Washington, GTE subsidiaries have previously relocated demarcation points to a single MPOE.

28. In newly constructed multi-unit buildings where it has not already installed inter-building cable, the policy established under the guidelines is to place a single demarcation point at the MPOE at the owner's or her agent's request.

29. GTE-SW also has a written policy on the location of the demarcation point in existing multi-unit locations, but it does not have a written policy regarding relocating multiple demarcation points to a single demarcation point that would require the use, purchase, or lease of its existing network cable.

30. The Company does, however, provide examples of similar situations in the GTEP at Section 3.3.2 and 3.3.3. GTE-SW has also addressed this scenario in a field guide written prior to the adoption of GTEP 610-148-010, specifically to assist outside plant work force with implementation of FCC guidelines. The field guide does not conflict with the GTEP, stating that even if the point of demarcation has been previously established, a customer may request rearrangement or an alternate location for the point of demarcation, but that the cost of any alteration or modification to the point of demarcation will be borne by the customer and continue to be placed at the MPOE.

31. Five apartment buildings are the subject of this complaint: (1) Anchorage Apartments in League City, Texas; (2) Deer Run in Dallas, Texas; (3) Crow's Nest Apartment in League City, Texas; (4) Bridgeport Apartments in Irving, Texas; and (5) Signature Point Apartments in League City, Texas. GTE-SW has multiple demarcation points for these apartment complexes which are located at the MPOE where GTE-SW's network cable enters each building and not a single point of entry or a point at or near the property line.

32. In 1993, MTS asked GTE-SW to sell the inter-building cable in the Deer Run Apartments, offering to pay GTE-SW the costs of relocating the demarcation points. GTE-SW began negotiating to establish a mutually agreeable demarcation point, indicating that it would consider selling the inter-building cable to MTS. In late 1994, GTE-SW and MTS agreed on an appropriate site for placement of the demarcation point at the MPOE at the Deer Run Apartments, but by January 1995, GTE-SW notified MTS that it would not be relocating the demarcation points and it would not be selling the inter-building cable in the Deer Run Apartments to MTS.

33. In early 1994, ResCom asked GTE-SW to relocate the multiple demarcation points at certain apartment complexes to a single MPOE in a switchroom, which would enable ResCom to jointly use, lease or purchase GTE-SW's previously installed network cable. ResCom also offered to pay GTE-SW for the cost of relocating the demarcation points.

34. Concerning the Palms in League City, Texas, GTE-SW and ResCom negotiated a mutually agreeable demarcation point and agreed that GTE-SW would sell its inter-building cable to ResCom at its depreciated value.

35. Subsequent to the Palms agreement, ResCom began negotiating the relocation of the demarcation points for the Bridgeport in Irving, Texas. ResCom installed a PBX at the Bridgeport complex, anticipating its purchase of the inter-building cable from GTE-SW. Approximately two weeks before the service was to be cut over at Bridgeport, GTE-SW informed ResCom that it would not be relocating the demarcation points or selling the inter-building cable to ResCom; that GTE-SW had reorganized in early December 1994 and reevaluated its position on the relocation of demarcation points and sale of cable; and that the GTE-SW employee who had been negotiating with ResCom would no longer be handling demarcation placement and cable sales for the Company.

36. Although GTE Telephone Operations developed the internal demarcation guidelines to be followed by all its regional operation companies with the implementation of CC Docket 88-57, GTE-SW management established a policy in December 1994 of not relocating multiple demarcation points to a single demarcation point at the request of STS providers whose sole purpose was to use, purchase or lease GTE-SW's previously installed cable, and the Company has not amended its STS tariff to reflect the policies and practices regarding the relocation of demarcation points to a single point for use, sale or lease to STS providers.

37. Technical reasons or concerns for risk or harm to the public network if customers are allowed to access embedded wire is not a factor in GTE-SW's refusal to relocate the demarcation points as requested by MTS and ResCom. Neither GTE-SW's written demarcation practice nor its STS tariff specifically addresses whether GTE-SW will sell its installed network wiring at apartment complexes.

38. Complainants filed this formal complaint on May 30, 1995. The Complainants are not seeking an additional demarcation point from which to build their own network cable. Complainants wish, however, to use, purchase, or lease GTE-SW's existing cable network, and they are willing to bear

the costs of relocating the demarcation points. Complainants allege that GTE-SW, by refusing to relocate the demarcation point, is applying its demarcation practices unreasonably and in an anti-competitive manner.

39. GTE-SW's STS tariff requires it to terminate its network access facilities at a mutually agreeable point of demarcation. The only terms and conditions in GTE-SW's General Exchange Tariff for placing the demarcation point in multi-unit properties are contained in GTE-SW's STS tariff. GTE-SW's Texas General Exchange Tariff, Section 44, 2nd Revised Sheet No. 5. The Commission approved the tariff in *Application of General Telephone Company of the Southwest for a Tariff Change to Provide for Tenant Resale Service*, Docket No. 6076, 11 P.U.C. BULL. 891 (Jan. 24, 1986).

40. The Complainants and GTE-SW agree that the phrase "mutually agreeable" should be given its ordinary meaning, which is that both parties to the transaction should be satisfied with the transaction.

41. GTE-SW located the demarcation point at a mutually agreeable location at the time the apartments were built, and has therefore complied with the first part of its tariff.

42. The tariff does not address the issue of relocating multiple demarcation points to a single demarcation point.

43. GTE-SW's STS tariff requires compliance with FCC Rules and Regulations.

44. GTE-SW did not modify its STS tariff after the FCC issued its Order in CC Docket No. 88-57, which occurred after GTE-SW's STS tariff was approved by the Commission in 1986.

45. One of the most appropriate reasons for including a demarcation practice in its tariff is to put customers and competitors on notice. Because the STS tariff does not set forth GTE-SW's demarcation practice, the customers and competitors of GTE-SW are not aware of GTE-SW's practice.

46. GTE-SW's internal policy does not put the public on notice as to GTE-SW's policy. Further, because the internal policy has not been approved by the Commission, GTE-SW has the power to alter its policy without Commission approval or public notice. This creates an unfair competitive advantage for GTE-SW.

47. A tariffed demarcation practice could eliminate costly complaint cases such as this docket.

48. GTE-SW's tariff does not provide enough information regarding relocating demarcation points. The current tariff amounts to one paragraph that provides little information and guidance on GTE-SW's demarcation practice.

49. Because of the lack of information in GTE-SW's tariff, it is reasonable for GTE-SW to file a revised STS tariff defining its demarcation practice within four months of the final Order in this docket.

50. The Order in CC Docket No. 88-57 allows GTE-SW to establish a reasonable and nondiscriminatory operating practice of placing the demarcation point at the MPOE for multi-unit properties. In the absence of such practice, the multi-unit property owner has the right to determine the location of the demarcation point.

51. The FCC did not specifically state that the demarcation practice had to be part of the local carrier's tariff; however, PURA 95 § 3.154 requires GTE-SW to include its demarcation practice within its tariff to clearly define its demarcation policy and to provide notice to all interested parties.

52. Because this case initiated from a complaint, the notice that was provided was not sufficient to allow for tariff changes in this proceeding.

53. The standards that were adopted by the Commission in Docket No. 10831 and the Staff recommendations in this case should provide guidance for GTE-SW in developing its tariff.

54. The evidence in this case is not sufficient to order tariff changes.

55. In September 1992, GTE Telephone Operations adopted Demarcation Guidelines, GTEP 610-148-010, containing specific terms and conditions for placing demarcation points in accordance with CC Docket No. 88-57. GTE-SW has ratified these guidelines for its internal use.

56. The Complainants do not dispute that GTEP 610-148-010 is consistent on the whole with FCC Rules. GTE-SW's demarcation guidelines do not, however, contain a specific written policy regarding whether it will relocate demarcation points for the purpose of allowing use, purchase, or lease of its existing network cable.

57. GTE-SW did not file tariff revisions following the Order in CC Docket No. 88-57 because it did not believe it was required to do so, and because its current tariff already requires it to comply with FCC Rules and Regulations.

58. Because the inside wire at the apartment complexes in question has been rearranged, modified, or added to since it was initially installed, the properties in this complaint are considered post August 13, 1990 properties and are governed by 47 C.F.R. § 68.3(b)(2).

59. GTE-SW's practice, which includes unwritten management policies is unreasonable and discriminatory.

60. GTE-SW agreed to locate the demarcation point at a single point at the Palms, but later refused to relocate the demarcation point at any other properties of the Complainants.

61. With respect to Deer Run Apartments, one of the complexes in dispute in this case, GTE-SW initially indicated to Complainants' representatives that GTE-SW would negotiate to establish a mutually agreeable demarcation point. Complainants also began negotiations to relocate the multiple demarcation points at Bridgeport and even installed a PBX on the property. Subsequently, negotiations stopped and Complainants were informed that GTE-SW had a new manager who handled these issues. It was only after the new manager, Mr. Ron Knight, became involved that the practice changed and GTE-SW refused to relocate.

62. GTE-SW's demarcation practice is not reasonable and nondiscriminatory, but rather inconsistent, and subject to change depending upon the management or the property involved.

63. It is not reasonable for GTE-SW to have an internal policy that can be changed at any time because of management decisions. If this were the accepted practice, GTE-SW could change its policy daily without notice to the customers.

64. GTE-SW's internal demarcation guidelines state that they are only for use by GTE-SW employees and approved contractors.

65. When ResCom representatives asked for a copy of the guidelines, they were told that they were proprietary and could not be provided. If GTE-SW does not reveal its internal guidelines to customers, then it becomes extremely difficult to determine if GTE-SW is operating reasonably.

66. GTE-SW eventually provided its internal guidelines to the Complainants as this proceeding progressed; however, it is unclear from the record if GTE-SW will provide its demarcation guidelines to other customers or competitors upon request.

67. Once GTE-SW files its tariff on demarcation practices and it is approved, the tariff will supersede any internal guidelines GTE-SW might have.

68. Section 3.3.2 of GTE-SW's internal guidelines, GTEP 610-148-010, states that "[t]he point of demarcation can be established at the property line in cases where the owner desires it."

69. In a field guideline established prior to the current internal guidelines, GTE-SW determined that a customer could seek relocation of the demarcation point at the customer's expense. GTE-SW's current internal guidelines are not in conflict with this statement.

70. GTE-SW's written internal guidelines therefore allow a customer to request the relocation of the demarcation point at the customer's expense.

71. The unwritten practice not to relocate, developed by new management, is arbitrary and unreasonable and is not included in GTE-SW's internal written guidelines. GTE-SW implemented this unwritten practice without notice to its customers, and it offered no plausible explanation for the change.

72. Because GTE-SW has failed to apply a reasonable and nondiscriminatory demarcation practice, the multi-unit property owner has the right to determine the location of the demarcation point.

73. It is reasonable for GTE-SW to collapse the multiple demarcation points on all properties in this proceeding to a singular demarcation point at the MPOE.

74. It is reasonable for GTE-SW to charge the Complainants for facilities rearrangement necessary to establish the singular demarcation point.

75. GTE-SW will continue to keep the investment associated with the cable facilities on the non-network side of the demarcation point on its books for regulatory accounting purposes.

76. GTE-SW will continue to earn a return on and depreciate the unrecovered portion of the investment associated with the cable facilities on the non-network side of the demarcation point.

77. If Complainants do not purchase the cable facilities, then they will have the "allowed use" of the facilities as defined in Docket No. 10831.

78. Until GTE-SW files its amended STS tariff and it has been approved by the Commission, it is reasonable to abate any further complaints requesting relocation of the demarcation point.

79. CC Docket No. 88-57 provides:

(a) That the point of demarcation between the telephone company network and the customer premises wiring begins at the minimum point of entry in a single customer premises;

(b) The owner of the building (or installation) with multiple customers may designate whether to maintain multiple demarcation points at each customer premises or to establish one demarcation point at the minimum point of entry to the building (or installation);

(c) That customers may connect simple inside wire to existing wire on the customer's/building owner's side of the demarcation point;

(d) That the telephone company may disconnect service when harm occurs to the network as a result of customer-installed cable and equipment;

(e) That certain requirements for acceptance testing be eliminated and provides jack and plug requirements; and

(f) That the telephone companies are encouraged to develop and distribute an informational brochure on the rights of subscribers to perform inside wire operations.

80. The Order in CC Docket No. 88-57 emphasizes flexibility and permits the relocation of the demarcation points.

81. The FCC's intent in CC Docket No. 88-57 was to expand the customer's control over access to inside wiring and cable facilities.

82. The FCC intended for the local carriers to specifically define their demarcation practice, which should account for relocating multiple demarcation points to a single demarcation point at the MPOE.

83. It is reasonable for GTE-SW to amend its STS tariff to address collapsing multiple demarcation points to a single demarcation point at the MPOE to respond to the FCC's Order in 88-57 and the increased competition in the telecommunications industry.

84. Because the relocation of GTE-SW's demarcation points has never been addressed, Complainants have not waived their right to bring this complaint.

85. Because GTE-SW will continue to keep the investment associated with the cable facilities and earn a return on the unrecovered portion of the investment, GTE-SW is not harmed, thus, Complainants are not equitably estopped from requesting relocation of the demarcation points.

86. Since 1986, the telecommunications industry has witnessed significant changes, including increased competition. The focus on competition has to be considered by the Commission in reviewing GTE-SW's demarcation practice.

XIII. CONCLUSIONS OF LAW

1. GTE-SW is a public utility as defined in PURA 95 § 3.002(9).
2. The Commission has jurisdiction and authority over this complaint pursuant to PURA 95 §§ 1.101, 3.051(b), 3.201, 3.202, 3.210(a).
3. SOAH has jurisdiction over all matters relating to the conduct of a hearing in this proceeding, including the preparation of a PFD with findings of fact and conclusions of law, pursuant to TEX. GOV'T. CODE ANN. § 2003.047.
4. GTE-SW provided notice of this proceeding in compliance with P.U.C. PROC. R. 22.55 and as ordered by the ALJ.
5. GTE-SW has the burden in this case to show what its tariff and internal guidelines provide, that its tariff and internal guidelines are in compliance with PURA 95 and FCC Rules, and that it applies its tariff and internal guidelines in compliance with PURA 95 and FCC Rules. PURA 95 § 3.204.
6. In this case, GTE-SW has not satisfied its burden of proof. More specifically, GTE-SW did not demonstrate that it provisions its current STS tariff or internal guidelines in a nondiscriminatory and reasonable manner as required 47 C.F.R. § 68.3(b)(2) and PURA 95 §§ 3.215 and 3.217. Furthermore, GTE-SW failed to show that its current STS tariff adequately addresses its demarcation practice.
7. The recommendations in this case are in compliance with CC Docket No. 88-57 and 47 C.F.R. § 68.3.

8. The Commission cannot render a decision inconsistent with federal law. *U.S. Const. Art. 4, § 2, cl. 1*; PURA 95 §§ 1.404, 3.201, 3.460(b).

9. Federal preemption only occurs if Congress expresses a clear intent to preempt state law, and this would occur if there is an actual conflict between state and federal law; compliance with both state and federal law is impossible; the federal law creates a barrier to state regulation; the federal law does not allow the States to supplement federal law; or state law stands as an obstacle to the objectives of the federal law. *Louisiana Public Service Comm'n v. F.C.C.*, 106 S. Ct. 1890, 1898-1899 (1986). None of the situations described in the *Louisiana Public Service Comm'n* case have occurred in this proceeding; therefore, federal preemption does not prohibit the Commission from rendering a decision in this case.

10. GTE-SW violated its tariff because it did not comply with 47 C.F.R. § 68.3(b)(2), which allows the local carrier to establish a reasonable and nondiscriminatory demarcation practice.

11. Because GTE-SW has failed to apply a reasonable and nondiscriminatory demarcation practice, the multi-unit property owner has the right to determine the location of the demarcation point. 47 C.F.R. § 68.3(b)(2).

12. The Commission has authority to determine if a public utility discriminates between customers regarding any service and to determine if a public utility is engaging in a practice that impairs competition. See PURA 95 §§ 3.215 and 3.217. The Commission would have further authority to remedy any conduct it found to be unreasonable, discriminatory, or anti-competitive. PURA 95 §§ 3.155, 3.201, and 3.210.


13. GTE-SW violated PURA 95 §§ 3.215 and 3.217 because it did not provision its demarcation practice in a reasonable, non-discriminatory, and competitive manner.

14. GTE-SW's demarcation practice is rate, as defined in PURA 95 § 1.003(14).

15. Because GTE-SW's demarcation practice is a rate, GTE-SW is obligated to file its rules and regulations affecting its demarcation practice as a tariff with the Commission. PURA 95 § 3.154(a) and (b).

SIGNED AT AUSTIN, TEXAS the 1st day of April 1996

STATE OFFICE OF ADMINISTRATIVE HEARINGS



MICHAEL J. O'MALLEY
ADMINISTRATIVE LAW JUDGE

ATTACHMENT A

SOAH DOCKET NO. 473-95-1190
PUC DOCKET NO. 14147

COMPLAINT OF GE CAPITAL RESCOM § BEFORE THE STATE OFFICE
AND MULTITECHNOLOGY SERVICES, § OF
L.P. AGAINST GTE SOUTHWEST § ADMINISTRATIVE HEARINGS
INCORPORATED FOR REFUSAL TO §
RELOCATE DEMARCATION POINTS §

STIPULATION OF FACTS

1. GE Capital ResCom (ResCom) and MultiTechnology Services, L.P. (MTS) are shared tenant service providers that offer their services to tenants in residential high-rise buildings and apartment complexes
2. ResCom and MTS typically provide access to local exchange voice and data, and long distance voice and data services, as well as video and climate control services to tenants in the properties which they serve.
3. Both ResCom and MTS are the agents of the owners of the properties in which they provide residential multi-tenant service (RMTS), for purposes of establishing, maintaining and providing telecommunications services in those properties.
4. ResCom and MTS are both customers and competitors of GTESW.
5. ResCom and MTS compete with GTESW for local exchange customers in multi-tenant buildings located in GTESW service territory
6. ResCom and MTS must obtain shared tenant services from GTESW's shared tenant service tariff to interface with the local network to provide their telecommunications services in properties located in GTESW service territory

- 7 GTESW has not refused to provide shared tenant services to Complainants
- 8 This complaint involves the following properties Deer Run, Crow's Nest, Bridgeport, The Anchorage, and Signature Point apartment properties, and the reasonableness of GTESW's demarcation practices in general.
- 9 When the owners of the apartment complexes in question requested telephone service to their respective apartments, this required GTESW, as the only certified local exchange company in the area, to install the network cable that currently exists on the properties in question
- 10 The original property owners or construction company subcontractors determined where their electrical wires would exit each building at a common exit point and where the grounding wires would be located.
- 11 GTESW's network cable was installed on these properties on the following dates and at the following original costs including materials and labor:

<u>Name/Address</u>	<u>Original Cost</u>	<u>Date Installed</u>
Deer Run 3637 Trinity Mills Dallas, Texas 75287	\$42,721.00	1984
Crow's Nest Apartment 501 Davis Road League City, Texas 77573	\$13,875.00	1983
Bridgeport Apartments 4111 Polaris Irving, Texas 75038	\$25,260.00	1983

Anchorage Apartments 451 Constellation League City, Texas 77573	\$27,973.00	1984
Signature Point 1 Signature Point Drive League City, Texas 77573	\$45,238.00	1994

12. The total original cost GTESW incurred to install its network cable at the apartment complexes in question was \$158,117.00

13. After depreciation, the net book value of GTESW's network cable at the above listed properties is as follows:

<u>Name</u>	<u>Current Value</u>
Deer Run Apartments	\$10,069.23
Anchorage Apartments	\$ 5,534.94
Signature Point Apartments	\$16,991.55
Bridgeport Apartments	\$ 8,508.44
Crow's Nest Apartments	\$ 1,735.06

14. The Commission approved depreciation schedule for GTESW's network cable is 14.3 years
15. John Costello, an Assistant Director in the Industry Analysis Division of the Public Utility Commission, contends that the amount of time required for a majority of the network cable to be depreciated is nine years from the time of installation.